

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BLACKWATER SECURITY
CONSULTING, LLC, a Delaware Limited
Liability Company; and BLACKWATER
LODGE AND TRAINING CENTER, INC., a
Delaware Corporation

CIVIL ACTION NO. 05-6020

Plaintiffs,

vs.

WESTCHESTER SURPLUS LINES
INSURANCE COMPANY, a Georgia
Corporation

and

EVANSTON INSURANCE COMPANY, an
Illinois Corporation

and

FIDELITY AND CASUALTY COMPANY
OF NEW YORK, a South Carolina
Corporation

and

LIBERTY INSURANCE
UNDERWRITERS, a Massachusetts
Corporation

Defendants.

**DEFENDANT, WESTCHESTER SURPLUS LINES INSURANCE
COMPANY'S RESPONSE TO PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT ON THE DUTY TO DEFEND AGAINST
WESTCHESTER SURPLUS LINES INSURANCE COMPANY AND
CROSS MOTION FOR ADDITIONAL DISCOVERY PURSUANT TO F.R.Civ.P. 56(f)**

Defendant Westchester Surplus Lines Insurance Company ("WSLIC"), by and through its attorneys, Deasey, Mahoney & Valentini, Ltd., respectfully responds to Plaintiffs' Motion for Partial Summary Judgment on the duty to defend and, pursuant to F.R.Civ.P. 56(f) cross motions for additional discovery in reliance upon the Affidavit of Keith Phillips, incorporated by reference hereto and attached to the Memorandum of Law in support of WSLIC's response. Essentially, Plaintiffs' Motion requests a declaration regarding WSLIC's duty to defend

Plaintiffs in the underlying action captioned Nordan v. Blackwater Security Consulting, LLC, et al., 05-CVS-000173 (hereinafter “Nordan litigation”) pursuant to WSLIC’s CGL policy No. GLW778197. In short, Plaintiffs’ Motion is moot as WSLIC has discharged its duty to defend Blackwater in connection with the Nordan litigation under a complete Reservation of Rights. To the extent that Plaintiffs’ Motion seeks a declaration that the grounds upon which WSLIC has reserved rights are inappropriate, WSLIC moves for additional discovery pursuant to F.R.Civ.P. 56(f) to obtain facts not currently available to WSLIC and in Plaintiffs’ possession in order to oppose Plaintiffs’ Motion. In support of this Response and Crossclaim, WSLIC relies upon and incorporates the attached Memorandum of Law and Affidavit of Keith Phillips pursuant to F.R.Civ.P. 56(f) in support thereof.

WHEREFORE, Defendant Westchester Surplus Lines Insurance Company respectfully requests that this Court enter the accompanying proposed Order pursuant to F.R.Civ.P. 56(f).

Respectfully Submitted,

DATE: 8-10-07

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